

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 13 January 2004**

**CASE NO.: 2000-ERA-0031**

**ARB CASE NO.: 02-007**

In the Matter of

**RICHARD M. KESTER,**  
Complainant,  
v.

**CAROLINA POWER & LIGHT COMPANY**  
**d/b/a PROGRESS ENERGY CAROLINAS, INC.,**  
Respondent.

**RECOMMENDED DECISION AND ORDER APPROVING**  
**SETTLEMENT AGREEMENT AND DISMISSING COMPLAINT**  
**WITH PREJUDICE**

This is a proceeding arising under the Energy Reorganization Act ("ERA"), 42 U.S.C. § 5851, and its implementing regulations at 29 C.F.R. Part 24. On December 29, 2003, the parties submitted a duly executed "Joint Motion for Approval of the Settlement Agreement, Dismissal with Prejudice, and Confidential Treatment of the Settlement Agreement." Although Part 24 regulations do not contain any provision relating to dismissal of a complaint by voluntary settlement, under the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which are controlling in the absence of a specific provision at Part 24, the parties in a proceeding before an administrative law judge may reach agreement on their own. 29 C.F.R. Part 18.9(a)-(c).

Under the terms of the instant Settlement Agreement, the Respondent agrees to pay Complainant a stated sum in consideration of releases and discharges stated therein. With respect to the confidentiality provision of the Settlement Agreement, which provides that the parties shall keep the terms of the settlement confidential, it is noted that they have attempted to comply with applicable case law by specifically providing that the confidentiality provision does not restrict disclosure where required by law. See McGlynn v. Pulsair, 93 CAA2 (Sec'y June 28, 1993).

I have reviewed the settlement agreement and I enter the following findings:

1. The Settlement Agreement appears to be fair and reasonable on its face and it further appears that it effectuates the purposes and policies of the statute under which it arises;

2. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits;
3. The entire record on which this Decision and Order is based consists solely of the Complaints and the Settlement Agreement between the parties; and,
4. The parties are hereby deemed to waive any further procedural steps before the undersigned or the Secretary of Labor, as appropriate, regarding the matters which are the subject of their Agreement.

Based on the foregoing, and in accordance with the agreement of the parties, IT IS ORDERED that:

1. The Settlement Agreement be, and it hereby is, APPROVED;
2. The Agreement will be part of the record but will not be attached to this order.
3. The Complaint in this matter is hereby DISMISSED with prejudice.
4. The parties' Motion for Confidential Treatment of Settlement Agreement is hereby granted. Pursuant to 29 C.F.R. §70.26, the terms of the Settlement Agreement shall not be disclosed by any party, either specifically or generally.

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RICHARD K. MALAMPHY  
Administrative Law Judge

RKM/ccb  
Newport News, Virginia

**NOTICE:** This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §§ 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. Such petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§ 24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).